

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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In the Matter of:	)	
	)	
NORTRU, INC.	)	
Detroit, Michigan	)	U.S. EPA Docket No. MM-05-2002-0010
	)	RCRA-05-2002-0017
Respondent.	)	CAA-05-2002-0020
	)	
U.S. EPA Facility I.D. Numbers:	)	Proceeding under Section 3008(a) of the
MID 980 615 298 (RCRA)	)	Resource Conservation and Recovery Act,
MID 985 684 088 (RCRA)	)	42 U.S.C. § 6928(a) and under
MID 985 619 824 (RCRA)	)	Section 113(d) of the Clean Air Act,
	)	42 U.S.C. § 7413(d).
_____	)	

**CONSENT AGREEMENT AND FINAL ORDER ("CAFO")**

**I. PREAMBLE**

On September 30, 2002, the United States Environmental Protection Agency ("U.S. EPA") filed a Complaint in this matter pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and by the Hazardous and Solid Waste Amendments of 1984, ("RCRA"), 42 U.S.C. § 6928(a), pursuant to section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), and pursuant to the applicable federal and state regulations implementing RCRA and CAA. The Complaint also was brought pursuant to U.S. EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

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or Suspension of Permits (“Consolidated Rules”), codified at 40 C.F.R. Part 22 (2002). The Complainants are the Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, and the Director of the Air and Radiation Division, both of U.S. EPA, Region 5. The Respondent is Nortru, Inc. (“Nortru”), which is a corporation incorporated under the laws of the State of Michigan and which does business in Michigan.

## **II. STIPULATIONS**

Complainants and Respondent (the “Parties”), desiring to settle this matter, enter into the following stipulations:

1. A Complaint has been filed in this matter. The allegations of the Complaint are incorporated herein by reference.

2. Respondent owns and operates the following facilities: the Petro-Chem Processing Group, a division of Nortru, located on property Respondent owns at 421 Lycaste Avenue, Detroit, Michigan, which is assigned the U.S. EPA RCRA identification number MID 980 615 298 (the “PCPG Facility”); the Solvent Distillers Group, a division of Nortru, located on property Respondent owns at 421 Lycaste Avenue, Detroit, Michigan, which is assigned the U.S. EPA RCRA identification number MID 985 684 088 (the “SDG Facility”); the Nortru Resources Group, a division of Nortru, located on property Respondent leases at 611 Hillger, Detroit, Michigan, which is assigned the U.S. EPA RCRA identification number MID 985 619 824 (the “NRG Facility”); and Nortru Transportation, a division of Nortru, located on property Respondent owns at 550 Lycaste Avenue, Detroit, Michigan, which is assigned the U.S. EPA

RCRA identification number MID 985 619 892 (the “Nortru Transfer Facility”). In addition, Respondent engages in the off-site transportation of hazardous wastes.

3. Respondent acknowledges its responsibility to comply with the provisions of the following statutory and regulatory requirements at each of the facilities identified in Paragraph 2 of this CAFO:

A. All applicable provisions of RCRA, 42 U.S.C. § 6901 *et seq.*;

B. All applicable provisions of the administrative regulations promulgated by U.S. EPA under RCRA, 40 C.F.R. Parts 260, 261, 262, 263, 264, 265, 266, 268, 270, and 279, except to the extent U.S. EPA has authorized Michigan and the Michigan Department of Environmental Quality (“MDEQ”) pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), to administer its own program regarding such matters;

C. All applicable provisions of the laws and regulations of the State of Michigan concerning the generation and management of hazardous wastes which are codified at Part 111, Hazardous Waste Management, Michigan Compiled Laws (M.C.L.), 324.11101 *et seq.*, of Michigan's Natural Resources and Environmental Protection Act, 1994, PA 451, as amended, and in the Michigan Administrative Code (M.A.C.), Rules R299.9101 *et seq.*, and as to which U.S. EPA has, pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), authorized the State of Michigan; and

D. All applicable monitoring, inspection, recordkeeping, reporting, operating, and emission capture, and control requirements of Subpart DD of Part 63 (the Off-Site

Waste and Recovery Operations (OSWRO) NESHAP, promulgated at 40 C.F.R. Part 63, Subpart DD) and of Section 112 of the CAA, 42 U.S.C. § 7412.

E. All applicable provisions of the Hazardous Waste Treatment and Storage Facility Operating License issued by the MDEQ to Respondent on June 16, 1999, and the Hazardous Waste Management Permit issued by U.S. EPA to Respondent on August 1, 1999, regarding the PCPG Facility and the SDG Facility.

4. In the Complaint, the Complainants allege that the PCPG Facility, the SDG Facility, and the Nortru Transfer Facility constituted one “plant site.” as that term is defined at 40 C.F.R. § 63.681 (2002), which is a major source of hazardous air pollutant emissions pursuant to section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), because the plant site emits or has the potential to emit, in the aggregate, more than twenty-five tons per year of any combination of hazardous air pollutants.

5. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint.

6. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint. Except as otherwise stated in this CAFO, Respondent expressly reserves all rights and defenses it may have regarding the PCPG Facility, the SDG Facility, the NRG Facility, and the Nortru Transfer Facility, except that Respondent agrees not to contest EPA’s jurisdiction to issue or enforce this CAFO and agrees not to contest the terms of this CAFO. The Parties agree that the signing of this CAFO is for

settlement purposes only and does not constitute an admission by Respondent that the law has been violated, or constitute evidence of the same.

7. For the purpose of this proceeding, and only to the extent required under 40 C.F.R. § 22.18(b)(2) (2002), Respondent waives any right to contest the allegations in the Complaint and its right to appeal the attached Final Order.

8. If Respondent fails to comply with any provision of this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to seek to compel compliance with the CAFO and/or to seek a civil penalty for Respondent's noncompliance with this CAFO. Respondent reserves all other claims and defenses in connection with any such civil action, except as otherwise provided in this CAFO.

9. Respondent consents to the issuance of the attached Final Order and to Respondent's payment of a civil penalty as stated in this CAFO. Pursuant to sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§ 6928(a) and 6928(g), and sections 113(d) and 113(e) of the CAA, 42 U.S.C. §§ 7413(d) and 7413(e), and considering the nature of the violations, the ability to pay of Respondent and Respondent's parent, Philip Services Corporation, a Delaware Corporation ("Philip"), and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is TWO-HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$225,000). Respondent agrees not to claim or attempt to claim a federal income tax

deduction or credit covering all or any part of the cash civil penalty or any stipulated penalty paid to the U.S. Treasury. 26 U.S.C. § 162(f).

10. Respondent shall give notice and a copy of any relevant portion of this CAFO to any successors in interest prior to any transfer of ownership or operational control of the SDG Facility, the PCPG Facility, the NRG Facility or the Nortru Transfer Facility. This CAFO is binding on U.S. EPA, Respondent, and any successors in interest to U.S. EPA or Respondent. Respondent also shall notify U.S. EPA, in accordance with the notice provisions of Paragraph 34 of this CAFO, of any successor in interest within ninety (90) days prior to any such transfer, if and to the extent required by 40 C.F.R. § 270.40(b); otherwise, Respondent shall notify U.S. EPA in accordance with the notice provisions in Paragraph 34 of this CAFO, of any successor in interest within 30 days after such transfer.

11. On October 30, 1986, the State of Michigan was granted final authorization by the Administrator of the U.S. EPA, pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), to administer a hazardous waste program in lieu of the federal program.

12. Section 3008 of RCRA, 42 U.S.C. § 6928, provides that whenever the Administrator of U.S. EPA determines that any person has violated or is violating a requirement of RCRA, or has violated or is violating a requirement of a State hazardous waste program which was authorized pursuant to section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may issue an order requiring compliance with RCRA and may assess a penalty for any past or current violation of RCRA.

13. As of the effective date of this CAFO, U.S. EPA has not authorized the State of Michigan to administer the Subpart AA or BB regulations, promulgated at parts 264 and 265 of title 40 of the Code of Federal Regulations, as those regulations apply to generators of hazardous waste. Nor has U.S. EPA granted the State of Michigan authorization to administer the Subpart CC regulations, promulgated at parts 264 and 265 of title 40 of the Code of Federal Regulations.

14. This CAFO shall become effective on the date it is signed by the Regional Administrator of Region 5, U.S. EPA.

15. The Parties agree that installing and operating the control technology contemplated under Paragraph 19.A of this CAFO will reduce organic air emissions regulated under Subparts AA and CC of 40 C.F.R. Part 264 (2002) and Subpart DD of 40 C.F.R. Part 63 (2002) ("Organic Air Emissions") (including hazardous air pollutants as defined in 40 C.F.R. § 63.2 (2002) ("HAPs")) from the PCPG Facility and the SDG Facility.

### **III. FINAL ORDER**

16. Based on the foregoing stipulations, and because settling this action without further litigation, upon the terms in this CAFO, is in the public interest, the Parties agree to entry of the following Final Order:

#### **Compliance Measures**

17. Respondent shall implement the compliance measures set forth in this section ("Compliance Measures") at the PCPG Facility, the SDG Facility and the NRG Facility in accordance with the schedules stated herein.

18. Interim Compliance Measures.

A. Except as otherwise provided in this Paragraph 18.A, no later than fifteen (15) days after the effective date of this CAFO, Respondent shall make any changes to the closed-vent systems which are installed and operating at the PCPG Facility and the SDG Facility as of the effective date of this CAFO and are regulated under Subparts AA and CC of 40 C.F.R. Part 264 (2002) and Subpart DD of 40 C.F.R. Part 63 (2002) that are necessary to ensure that those closed-vent systems are:

i) Not open to the atmosphere;

ii) In compliance with the design requirements set forth at 40 C.F.R. §§ 264.1033(k) and 264.1087(b) (2002) and 40 C.F.R. § 63.693(c)(2) (2002) and are operating as designed;

iii) Collecting Organic Air Emissions (including HAPs), to the extent such emissions are required to be routed to a control device, from: (i) all process vents, as defined at 40 C.F.R. § 264.1031 (2002), that are installed and operating as of the effective date of this CAFO on any “off-site material management unit,” as identified at 40 C.F.R. § 63.680(c) (2002); (ii) all process vents, as defined at 40 C.F.R. § 264.1031 (2002), that are installed and operating as of the effective date of this CAFO on any tank; and (iii) all other tanks installed and operating as of the effective date of this CAFO, as identified at 40 C.F.R. §§ 264.1032, 264.1082, and 264.1084 (2002).

Within fourteen (14) days after completion of the changes required to comply with this Paragraph 18.A, Respondent shall submit to U.S. EPA a report and as-built plans identifying the specific changes made, the reasons for the changes, and the capital cost of those changes. The requirements of this Paragraph 18.A shall not apply to the vents, tanks, and equipment located within the Container Processing System (“CPS”) building as of the effective date of this CAFO that are associated with the CPS Phase I unit and the Phase II unit, including, by way of example and not by limitation, air locks, compaction chambers, shredders, conveyors, maceration tanks, liquifaction tanks, magnetic separators, discharge chutes, and self-dumping hoppers. Subject to Paragraphs 20 and 21 of this CAFO, Respondent may continue to process hazardous waste authorized in Respondent’s hazardous waste operating license in such tanks and equipment located within the CPS building, provided that Respondent continues collecting and controlling Organic Air Emissions (including HAPs) from such tanks and equipment using the equipment and procedures employed by Respondent as of the effective date of this CAFO.

B. As of the effective date of this CAFO, Respondent has, and shall adhere to, a startup, shutdown, and malfunction plan for the Master Vapor Recovery System (“MVRS”) prepared as required by 40 C.F.R. §§ 63.6(e) and 63.680(f) (2002). Respondent shall continue to follow that startup, shutdown, and malfunction plan, and

shall comply with 40 C.F.R. § 63.6(e)(1), until the MVRS is no longer functioning as a control device for the PCPG Facility and the SDG Facility.

19. Final Compliance Measure. Within sixty (60) days after the effective date of this CAFO, Respondent shall notify U.S. EPA in accordance with Paragraph 34 of this CAFO that Respondent shall do one of the following:

A. Re-construct and re-configure the CPS building at the PCPG Facility so that it effectively functions as one or two permanent total enclosure(s) as defined in 40 C.F.R. § 52.741 (2002), Appendix B, and install and operate a regenerative thermal oxidizer (“RTO”) and a closed-vent system routed to the RTO that will collect Organic Air Emissions (including HAPs) from within the permanent total enclosure(s), as well as from any other units regulated under Subparts AA and CC of 40 C.F.R. Part 264 (2002) or under Subpart DD of 40 C.F.R. Part 63 (2002), located at the PCPG Facility and the SDG Facility which are required to be routed to a control device and which are not routed by Respondent to another effectively operating control device (“Compliance Option I”) in accordance with the schedules in Paragraph 20 of this CAFO; or

B. Stop processing hazardous waste in the CPS building in accordance with the schedules in Paragraph 21.A of this CAFO; provided, however, that Respondent may continue to process hazardous waste in the CPS building in (i) any unit that is not required to be routed to a control device pursuant to Subparts AA or CC of 40 C.F.R. Part 264 or Subpart DD of 40 C.F.R. Part 63; and (ii) any other units, such as the liquefaction

tank and the solvent tank, if Respondent is routing emissions from those units to another effectively operating control device in compliance with Subparts AA or CC of 40 C.F.R. Part 264 or Subpart DD of 40 C.F.R. Part 63 (“Compliance Option II”). The units identified in clauses (i) and (ii) of the preceding sentence shall, collectively, be referred to throughout this CAFO as “Effectively Controlled Units.”

20. Final Compliance Measure. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO, Respondent shall implement the Final Compliance Measures set forth in this Paragraph 20 in accordance with the schedules herein.

A. Within eight (8) months after the effective date of this CAFO, Respondent shall re-construct and re-configure the CPS building at the PCPG Facility so that it effectively functions as one or two permanent total enclosure(s) that meet(s) the design specifications for a permanent total enclosure set forth at 40 C.F.R. § 52.741 (2002), Appendix B, and 40 C.F.R. § 264.1084(i) (2002). Within ninety (90) days after the effective date of this CAFO, Respondent shall submit to U.S. EPA final project design plans and specifications for the permanent total enclosure(s). In addition, if Respondent’s final project design plans and specifications as referenced in the preceding sentence include two permanent total enclosures within the CPS building, Respondent shall implement the attached operations plan (Attachment 1), which U.S. EPA hereby

approves, on the first day of the RTO demonstration period, and shall continue to implement it from that date forward.

B. Respondent shall procure, install, and operate a RTO which will operate as a control device for Organic Air Emissions (including HAPs) emitted both by the units at the PCPG Facility and the SDG Facility which are required to be routed to a control device under Subparts AA and CC of 40 C.F.R. Part 264 (2002) or under Subpart DD of 40 C.F.R. Part 63 (2002), and which are not routed by Respondent to another effectively operating control device, including such units located within the CPS building; and by any other unit located within the permanent total enclosure(s) during such periods when the permanent total enclosure(s) is vented to the RTO. Respondent shall procure, install, and operate the RTO and all necessary associated equipment so that the RTO will reduce the organic content of the Organic Air Emissions (including HAPs) routed to the RTO by a minimum of 95 percent by weight as required by 40 C.F.R. § 63.693(f) (2002). The RTO shall be designed to meet the following additional minimum specifications:

i) A flow rate capacity of 30,000 standard cubic feet per minute (“cfm”) if Respondent installs one permanent total enclosure within the CPS building, or 20,000 cfm if Respondent installs two permanent total enclosures within the CPS building;

ii) A redundant lower explosive limit monitoring system and bypass stack;

- iii) A stack testing platform for compliance testing purposes;
- iv) A scrubber as needed for acid control;
- v) Be designed to accommodate the average and maximum expected organic (VOC) loading rates based on the design of the enclosure(s) within the CPS building (such loading rates for a single enclosure are 248 lb/hr and 427 lb/hr, respectively); and
- vi) Comply with the design requirements set forth at 40 C.F.R. § 63.693(f) (2002).

C. Respondent shall complete the procurement and installation and commence operation of the RTO and all necessary associated equipment in accordance with the following schedule:

- i) Submit to U.S. EPA a final design report and project specifications within ninety (90) days after the effective date of this CAFO;
- ii) Issue a purchase order for the RTO and notify U.S. EPA of such issuance within ninety (90) days after the effective date of this CAFO;
- iii) Submit to U.S. EPA for approval, within one-hundred and twenty (120) days after the effective date of this CAFO, a performance test plan for the RTO, including verification that the closed vent system operates below atmospheric pressure as required by 40 C.F.R. § 63.693(c)(1)(ii) (2002), and documentation of Procedure T compliance for the permanent total enclosure(s) of

the CPS building in accordance with 40 C.F.R. § 52.741 (2002), Appendix B.

The performance test plan for the RTO shall require that the performance test be conducted in accordance with the requirements of 40 C.F.R. §§ 63.7(e) and (g) and 63.694(l) (2002). Within sixty (60) days after U.S. EPA receives the performance test plan and documentation of Procedure T compliance, U.S. EPA shall approve the submittal or provide a written Notice of Deficiency to Respondent, stating the specific reasons for the disapproval. In the event that U.S. EPA fails to approve the performance test plan and documentation of Procedure T compliance or provide a written Notice of Deficiency to Respondent within sixty (60) days after U.S. EPA receives the performance test plan and documentation of Procedure T compliance, the performance test plan and documentation of Procedure T compliance shall be deemed approved.

Respondent shall modify the submittal in accordance with the Notice of Deficiency and submit a new submittal or revisions to the submittal to U.S. EPA for approval within thirty (30) days after receipt of the Notice of Deficiency;

iv) Issue a purchase order for the foundation for the RTO and notify U.S. EPA of such issuance within one-hundred and eighty (180) days after the effective date of this CAFO:

v) Install the RTO and all associated equipment, including the closed vent system, and initiate RTO operation, within nine (9) months after the effective date of this CAFO;

vi) Conduct a performance test of the RTO and all associated equipment, in compliance with the U.S. EPA-approved performance test plan referenced in Paragraph 20.C(iii) of this CAFO, and perform the Procedure T verification as required by 40 C.F.R. § 63.685(i)(1) (2002), within thirteen (13) months after the effective date of this CAFO. Notwithstanding the foregoing, if U.S. EPA has disapproved the performance test plan or Procedure T verification and Respondent has initiated Dispute Resolution with respect to such disapproval, Respondent shall conduct the performance test and Procedure T verification in accordance with the final U.S. EPA Dispute Decision resolving the dispute within ninety (90) days after Respondent receives such decision. Respondent shall notify U.S. EPA and MDEQ at least fifteen (15) days in advance of the date when Respondent will conduct the RTO performance test. U.S. EPA and MDEQ representatives will be allowed to be present and to observe all or any part of the performance test. Respondent shall conduct the performance test in accordance with the requirements of 40 C.F.R. §§ 63.7(e) and (g), 63.694(l) (2002).

vii) Submit to U.S. EPA, within fifteen (15) months after the effective date of this CAFO, or within two (2) months after Respondent conducts the

performance test in accordance with Paragraph 20.C(vi), whichever is later, a final report of the performance test Respondent conducts pursuant to Paragraph 20.C(vi). If Respondent becomes aware as a result of the performance test that the RTO is not attaining the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002), Respondent shall: (a) as soon as practicable, but no later than one hour after Respondent becomes aware as a result of the performance test that the RTO has failed to attain the performance specifications, stop processing hazardous waste in the CPS building (except in Effectively Controlled Units), except to the extent necessary for testing and shakedown of the RTO; (b) notify EPA of such failure as soon as reasonably practicable, but no later than two (2) months after Respondent conducted the performance test; (c) submit to U.S. EPA any necessary revisions to the performance test plan within seventy-five (75) days after notifying U.S. EPA of such failure; (d) conduct a subsequent performance test of the RTO within ninety (90) days after notifying U.S. EPA of such failure; and (e) submit to U.S. EPA a final report of the subsequent performance test within sixty (60) days after completing the performance test; and

viii) On and after the date that Respondent submits the final report to U.S. EPA demonstrating that the RTO attained the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002), Respondent shall operate and maintain the

RTO at or above the temperature conditions that existed when the performance test demonstrated attainment of those performance specifications.

D. Respondent shall design and install a closed-vent system to route to the RTO Organic Air Emissions (including HAPs) from the permanent total enclosure(s) of the CPS building as described in Paragraph 20.A of this CAFO, as well as from any other units regulated under Subparts AA and CC of 40 C.F.R. Part 264 (2002) or under Subpart DD of 40 C.F.R. Part 63 (2002) located at the PCPG Facility or the SDG Facility which are required to be routed to a control device and which are not routed by Respondent to another effectively operating control device. The closed-vent system shall be installed, subject to any necessary shakedown procedure, within nine (9) months after the effective date of this CAFO and shall be utilized during the performance test of the RTO and subsequently, except to the extent that repairs or modifications of the closed-vent system are needed for it to function in compliance with the provisions of this CAFO and all applicable regulations. The closed-vent system shall be fully functional on the date that Respondent submits the final report to U.S. EPA demonstrating that the RTO attained the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002), as required by Paragraph 20.C(vii) of this CAFO. The closed-vent system shall comply with the design requirements set forth at 40 C.F.R. § 63.693(c)(2) (2002). In addition, if the Respondent's final project design plans and specifications submitted to U.S. EPA pursuant to Paragraph 20.A of this CAFO require the installation of two permanent total

enclosures within the CPS building, the closed-vent system shall: (i) have dampers or other flow control devices that function automatically (not manually) to allow Respondent to direct the flow of Organic Air Emissions (including HAPs) to the RTO from the operating portion of the CPS building, and to prevent the flow of Organic Air Emissions (including HAPs) to the RTO from the other, and non-operating, portion of the CPS building; and (ii) have dampers or other flow control devices that function automatically (not manually) to allow Respondent to direct the flow of Organic Air Emissions (including HAPs) to the RTO from all units regulated under Subparts AA or CC of 40 C.F.R. Part 264 (2002) or under Subpart DD of 40 C.F.R. Part 63 (2002) located at the CPS building which Respondent directly vents to the RTO.

E. No later than the date that Respondent submits the final report to U.S. EPA demonstrating that the RTO attained the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002) as required by Paragraph 20.C(vii) of this CAFO, Respondent shall develop, submit to U.S. EPA, and begin to follow a startup, shutdown, and malfunction plan for the RTO, as required by 40 C.F.R. §§ 63.6(e) and 63.680(f) (2002), shall comply with 40 C.F.R. § 63.6(e)(1), and shall maintain the records specified by 40 C.F.R. §§ 63.10(b)(2)(i), (ii), and (iv) through (xi), and 63.696(g) and (h).

F. If there is a disruption or malfunction in the effective operation of the RTO which results in the RTO's inability to destroy Organic Air Emissions (including HAPs) routed to it by a minimum of 95 percent by weight, Respondent shall, upon

discovery of such disruption or malfunction, immediately stop adding hazardous waste to all units located at the PCPG Facility and the SDG Facility which are being routed to the RTO (including, but not limited to, all units located within the permanent total enclosure(s) within the CPS building (except Effectively Controlled Units as defined in Paragraph 19.C of this CAFO)) and, as soon as reasonably practicable thereafter, Respondent shall complete processing hazardous waste contained in such units immediately prior to such disruption or malfunction; Respondent may not resume processing hazardous waste in those units, except for purposes of testing and shakedown of the RTO, until the RTO is operating effectively or the emissions from those units are routed to another effectively operating control device.

G. If there is a disruption or malfunction in the effective operation of any portion of the closed-vent system at the PCPG Facility or the SDG Facility which results in a failure to route Organic Air Emissions (including HAPs) from one or more units regulated under Subparts AA and CC of 40 C.F.R. Part 264 (2002) or under Subpart DD of 40 C.F.R. Part 63 (2002) located at the PCPG Facility and the SDG Facility which are being routed through the closed-vent system, or from one or both of the permanent total enclosures located at the CPS Building, to the RTO, Respondent shall, upon discovery of such disruption or malfunction, immediately stop adding hazardous waste to such units and, as soon as reasonably practicable thereafter, complete processing hazardous waste contained in such units immediately prior to such disruption or malfunction; Respondent

may not resume processing hazardous waste in such units, except for testing and shakedown purposes, until the closed-vent system is operating effectively.

21. Respondent shall comply with this Paragraph 21 in accordance with the schedules contained herein:

A. If within sixty (60) days after the effective date of this CAFO, Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option II referenced in Paragraph 19.B of this CAFO, Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) upon such notice. If Respondent fails to notify U.S. EPA that Respondent elects to perform either Compliance Option I or Compliance Option II referenced in Paragraphs 19.A. and 19.B of this CAFO within sixty (60) days after the effective date of this CAFO, Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) upon the sixty-first (61st) day after the effective date of this CAFO. If Respondent notifies U.S. EPA of a change in election of compliance options as provided in Paragraph 21.H, upon such notice Respondent shall immediately stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO).

B. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO and Respondent fails to

re-construct and re-configure the CPS building at the PCPG Facility so that it effectively functions as one or two permanent total enclosure(s) by the date specified in Paragraph 20.A. Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO). Respondent shall not resume processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) until Respondent has re-constructed and re-configured the CPS building at the PCPG Facility so that it effectively functions as one or two permanent total enclosure(s).

C. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO and Respondent fails to issue a purchase order for the RTO by the date specified in Paragraph 20.C(ii), Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO). Respondent shall not resume processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) until Respondent has commenced installation of the RTO.

D. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO and Respondent fails to issue a purchase order for the RTO foundation by the date specified in Paragraph 20.C(iv), Respondent shall stop processing hazardous waste in the CPS building (except

in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO). Respondent shall not resume processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) until Respondent has commenced installation of the RTO foundation.

E. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO and Respondent fails to install the RTO and all necessary associated equipment by the date specified in Paragraph 20.C(v), or fails to install the closed-vent system as required by Paragraph 20.D, Respondent shall stop processing hazardous waste in CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) until installation of the RTO and all necessary associated equipment, as well as the closed-vent system, are complete.

F. If Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO and Respondent fails to begin operating the RTO by the date specified in, and in compliance with the performance specifications and the temperature condition required by Paragraph 20.C(viii), Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO) until Respondent begins to operate the RTO in compliance with the provisions of Paragraph

20.C(viii), except to the extent such operation is necessary for testing and shakedown of the RTO.

G. Any continued operation of the CPS Phase I unit or the Phase II unit inconsistent with this Paragraph 21 shall be deemed a violation of this CAFO for which stipulated penalties will accrue as provided in Paragraph 26 of this CAFO.

H. Provided that Respondent remains in compliance with this Paragraph 21, Respondent may at any time change its election from Compliance Option I referenced in Paragraph 19.A of this CAFO to Compliance Option II referenced in Paragraph 19.B of this CAFO by notifying U.S. EPA of such change in accordance with Paragraph 34 of this CAFO. On the date of such notice, Respondent shall stop processing hazardous waste in the CPS building (except in Effectively Controlled Units as defined in Paragraph 19.B of this CAFO). Respondent shall remain liable for any stipulated penalties that accrued prior to the date of such notice for any failure by Respondent to comply with the requirements of this CAFO related to Compliance Option I and which occurred before the date of such notice, but shall not be subject to additional stipulated penalties related to failure to perform Compliance Option I on and after the date of such notice.

22. If Respondent continues to process hazardous waste in the CPS building contrary to this CAFO or fails to conduct the performance test plan and documentation of Procedure T compliance to the extent required under this CAFO, U.S. EPA or the United States may seek injunctive relief in a federal court to enforce the terms of this CAFO. Respondent agrees not to

contest U.S. EPA's jurisdiction or authority to seek such injunctive relief, but reserves all other defenses to any such action.

23. Beginning with the first full month following the effective date of this CAFO through the later of the twelfth month following the effective date of this CAFO or until Respondent submits the final report to U.S. EPA demonstrating that the RTO attained the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002) as required by Paragraph 20.C(vii) of this CAFO, Respondent shall provide U.S. EPA with monthly progress reports. Progress reports are due by the 14<sup>th</sup> day of each month. The progress reports shall provide the following information:

A. A description of all activities performed under this CAFO during the prior month, and a description of all activities which Respondent intends to perform under this CAFO during the next month;

B. A description of all incidents occurring during the prior month which affected compliance with the terms of this CAFO, and all incidents Respondent expects to encounter during the next month which might affect such compliance, along with a description of the causes thereof, and a description of how Respondent addressed, or intends to address, those matters;

C. If Respondent has failed to comply with a requirement of this CAFO, or expects that it will not be able to comply with a requirement of this CAFO by the date

required for compliance, a statement of the date by which Respondent expects to achieve compliance;

D. Records of the prior month's operation of the MVRS and/or the RTO, depending on which control device is being used by Respondent at the time.

24. Within eighteen (18) months after the date that Respondent submits the final report to U.S. EPA demonstrating that the RTO attained the performance specifications set forth at 40 C.F.R. § 63.693(f)(1)(i) (2002) as required by Paragraph 20.C(vii) of this CAFO, Respondent shall provide to U.S. EPA an itemization of all costs Respondent incurred during the design of the RTO; construction and installation of the RTO; performance testing of the RTO; and final operation of the RTO for the twelve (12) month period immediately following the date that Respondent submits such final report. This itemization shall be supported, to the extent Respondent determines necessary in its sole discretion, by pertinent backup documentation. Respondent shall consider U.S. EPA's reasonable requests for any additional pertinent documentation concerning such costs. All such cost documentation, including the itemization, may be claimed as confidential business information by Respondent pursuant to 40 C.F.R. Part 2, Subpart B. by following the procedures for asserting and maintaining such a confidential business information claim which are set forth in those regulations.

25. RCRA Compliance Measures for the NRG Facility. Respondent agrees to implement the RCRA Compliance Measures specified in this Paragraph 25:

A. Respondent shall immediately upon the effective date of this CAFO cease any receipt, treatment, storage or disposal at the NRG Facility of: (i) any hazardous waste; (ii) any waste which U.S. EPA identified in the Complaint as “shredded metal hazardous waste”; and (iii) any waste removed from the CPS Phase II unit, the magnetic separator, or the maceration tank located at the PCPG Facility. Respondent may accumulate in accordance with applicable generator and/or environmental cleanup regulations hazardous waste that is generated at the NRG Facility. The terms of this Paragraph 25 shall have no force or effect if Respondent obtains a valid State operating license authorizing Respondent to treat, store, or dispose of hazardous waste at the NRG Facility, as well as any necessary federal RCRA permit authorizing such activities. Notwithstanding anything to the contrary in this CAFO, nothing in this CAFO shall prohibit Respondent from conducting in accordance with applicable laws activities at the NRG Facility that are exempt from state hazardous waste licensing or federal RCRA permitting requirements, including, by way of example and not limitation, exempt hazardous waste recycling activities that do not involve prior storage of hazardous waste, or activities otherwise permitted by law or rule, except that Respondent shall not conduct any activity at the NRG Facility that involves the receipt of hazardous waste or scrap metal that has been removed from the CPS Phase II unit, the magnetic separator, or the maceration tank located at the PCPG Facility. If Respondent conducts at the NRG Facility an exempt hazardous waste recycling activity that does not involve prior storage

of hazardous waste, Respondent shall notify U.S. EPA of such activity within thirty (30) days after its initiation.

B. Within nine (9) months after the effective date of this CAFO, Respondent shall remove from the NRG Facility the equipment and structures identified in the following table:

Area At NRG Facility	Equipment/Structure To Be Removed
Pulverizer Area	Feed table and Conveyor Pulverizer Discharge conveyor Magnetic separator
Drum Pancake Shredder and Cleaning Area	Grappler arm Drum compactor Feed table and conveyor Raw material tanks Shredder Lift conveyor and magnetic separator Parts washers Third stage rinse conveyor Caustic batch and make up tanks Third stage rinse tank Pumps Containment area walls around raw material tanks (cement block on floor slab), excluding the containment area floor Containment area walls around caustic batch and make up tanks (cement block on floor slab), excluding the containment area floor Curbs, trenches and sumps around shredder and parts washers

Within nine (9) months after the effective date of this CAFO, Respondent shall, at its

option. decontaminate by power washing to the extent necessary to remove any visible contamination and properly dispose of all wastewater, solid waste, and hazardous waste generated by such decontamination activities, or remove from the NRG Facility, all equipment, structures, floors, troughs, and sumps that are not identified in the above table and have come in contact with hazardous waste, which are located in the rag reclamation area, the drum storage area, the surface reclamation area, the drum shredder area, the west dock, the pulverizer area, and the caustic metal wash area. Respondent shall close the drum storage area at the NRG Facility in accordance with the closure performance standards set forth in 40 C.F.R. § 265.111 (2002). Except as required under the closure performance standards applicable to the drum storage area under the preceding sentence, to the extent Respondent encounters visibly contaminated soil beneath any structure removed from the NRG Facility during activities conducted pursuant to this Paragraph 25, Respondent shall excavate, characterize and properly dispose of such visibly contaminated soil; however, decontamination of the NRG Facility under this CAFO shall not otherwise require the cleanup or remediation of environmental media, including soil, surface water, or groundwater. Nothing in this CAFO shall prevent Respondent from reusing equipment located, or formerly located, at the NRG Facility or from transferring or selling such equipment to any third party for reuse. In addition, Respondent shall provide notice to U.S. EPA as follows:

i) No later than fifteen (15) days prior to the date Respondent expects to remove the curbs, trenches and sumps around the shredder and parts washers identified in Paragraph 25.B, Respondent shall give notice to U.S. EPA of that fact;

ii) No later than fifteen (15) days prior to the date Respondent expects to complete decontamination of the NRG Facility, including closure of the drum storage area, Respondent shall give notice to U.S. EPA of that fact; and

iii) No later than thirty (30) days after Respondent completes decontamination of the NRG Facility, including closure of the drum storage area, Respondent shall give notice to U.S. EPA of that completion and include in the notice the certification provided in Paragraph 37 of this CAFO.

#### **Stipulated Penalties**

26. Subject to the Force Majeure and Dispute Resolution provisions of this CAFO, Respondent shall pay stipulated penalties to U.S. EPA for each failure by Respondent to comply with the specified terms of the Compliance Measures section of this CAFO. Stipulated penalties shall be calculated in the following amounts:

A. For failure to perform the actions required by Paragraph 18.A and, if Respondent notifies U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO, for failure to perform the actions required by Paragraph 20.D, unless Respondent is in compliance with Paragraph 21, \$250 for the first

day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$250 per day

31st through 60th day, \$750 per day

Beyond 60th day, \$1000 per day.

B. If Respondent has notified U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO, for failure to:

i) Install and construct the permanent total enclosure(s) consistent with the requirements of Paragraph 20.A unless Respondent is in compliance with Paragraph 21;

ii) Issue a purchase order for the RTO consistent with the requirements of Paragraph 20.C(ii) unless Respondent is in compliance with Paragraph 21;

iii) Issue a purchase order for the foundation of the RTO consistent with the requirements of Paragraph 20.C(iv) unless Respondent is in compliance with Paragraph 21;

iv) Complete installation of the RTO and associated equipment, including the closed vent system, consistent with the requirements of Paragraphs 20.B(i) through (vi), 20.C(v), and 20.D, unless Respondent is in compliance with Paragraph 21; or

v) Operate the RTO consistent with the requirements of Paragraph 20.C(viii) unless Respondent is in compliance with Paragraph 21, \$1,000 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 15th day, \$1,000 per day

16<sup>th</sup> through 30<sup>th</sup> day, \$4,000 per day

31st through 60th day, \$12,000 per day

Beyond 60th day, \$17,500 per day.

C. If Respondent fails to notify U.S. EPA that Respondent elects to perform either Compliance Option I or Compliance Option II referenced in Paragraphs 19.A. and 19.B of this CAFO unless Respondent is in compliance with Paragraph 21, \$1,000 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 15th day, \$1,000 per day

16<sup>th</sup> through 30<sup>th</sup> day, \$4,000 per day

31st through 60th day, \$12,000 per day

Beyond 60th day, \$17,500 per day.

D. If Respondent has notified U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO, for failure to:

i) Timely submit any design plans and specifications, including, but

not limited to, the performance test plan and documentation of Procedure T compliance, to U.S. EPA unless Respondent is in compliance with Paragraph 21;

ii) Develop and submit to U.S. EPA a startup, shutdown, or malfunction plan for the RTO consistent with the requirements of Paragraph 20.E unless Respondent is in compliance with Paragraph 21 \$500 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$500 per day

31st through 60th day, \$750 per day

Beyond 60th day, \$1000 per day.

E. If Respondent has notified U.S. EPA that Respondent elects to perform Compliance Option I referenced in Paragraph 19.A of this CAFO, for failure to

i) conduct the performance test required by Paragraph 20.C(vi) unless Respondent is in compliance with Paragraph 21;

ii) perform the Procedure T verification required by Paragraph 20.C(vi) unless Respondent is in compliance with Paragraph 21; or

iii) conduct a subsequent performance test required by Paragraph 20.C(vii) unless Respondent is in compliance with Paragraph 21, \$1,000 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$1,000 per day

31st through 60th day, \$1,500 per day

Beyond 60th day, \$3,000 per day.

F. For failure to follow the startup, shutdown, and malfunction plan for the MVRS as required by Paragraph 18.B, \$500 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$500 per day

31st through 60th day, \$1,000 per day

Beyond 60th day, \$1,500 per day.

G. For failure to comply with the operations plan regarding Respondent's operations of the two permanent total enclosures, if applicable, consistent with the requirements of Paragraph 20.A unless Respondent is in compliance with Paragraph 21, \$500 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$500 per day

31st through 60th day, \$1,000 per day

Beyond 60th day, \$1,500 per day.

H. For failure to comply with Paragraphs 25.A or 25.B, \$1,000 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$1,000 per day

31st through 60th day, \$2,000 per day

Beyond 60th day, \$4,000 per day.

I. For failure to timely submit to U.S. EPA any reports or notices required by this CAFO, \$250 for the first day of violation and for each consecutive day that such violation continues thereafter:

2nd through 30th day, \$250 per day

31st through 60th day, \$500 per day

Beyond 60th day, \$750 per day.

J. For failure to timely submit to U.S. EPA the itemization of costs specified in Paragraph 24, \$0 for the first sixty (60) days of violation and \$250 per day for each consecutive day that the violation continues thereafter.

27. Stipulated penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the day that performance of the action is complete or the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this CAFO. Penalties shall continue to accrue regardless of whether U.S. EPA has notified Respondent of a violation.

28. Subject to Paragraph 29 of this CAFO, Respondent shall pay stipulated penalties upon written demand by U.S. EPA no later than thirty (30) days after Respondent receives such demand. Stipulated penalties shall be paid to U.S. EPA in the manner set forth in the Civil Penalty section of this CAFO. U.S. EPA's demand for the payment of stipulated penalties shall

identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount U.S. EPA is demanding for each violation, the calculation method underlying the demand, and the grounds upon which the demand is based.

29. Respondent may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under this CAFO. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the U.S. EPA Dispute Decision and/or agreement. Respondent shall submit such payment to U.S. EPA within ten (10) days after receipt of such resolution in the manner set forth in the Civil Penalty section of this CAFO.

#### **Civil Penalty**

30. Within fifteen (15) days after the effective date of this CAFO, Respondent shall pay a civil penalty in the amount of TWO-HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$225,000). Payment shall be made by cashier's or certified check to the order of "Treasurer, United States of America". The check shall be mailed to: U.S. EPA, Region 5, Regional Finance Office, P.O. Box 70753, Chicago, Illinois 60673. The name of Respondent, the billing document number, and the Docket Number of this proceeding shall be clearly marked on the face of the check. Copies of the transmittal of the payment shall be sent to the following, all of whom are located at Region 5, U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590: a) the Regional Hearing Clerk, Office of Enforcement and Compliance Assurance

(R-19J); b) Jacqueline Miller, Associate Regional Counsel (C-14J); c) Chief, Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division (DE-9J); and d) Attn: Compliance Tracker (AE-17J), Air Enforcement and Compliance Assurance Branch, Air and Radiation Division.

31. If Respondent does not timely pay the civil penalty, any undisputed stipulated penalty due under Paragraph 26 of this CAFO, or any disputed stipulated penalty that Respondent is obligated to pay pursuant to Paragraph 29 of this CAFO, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

32. Pursuant to 31 U.S.C. § 3717, Respondent shall pay the following amounts on any amount overdue under this CAFO:

A. Interest. Any unpaid portion of a civil penalty or stipulated penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will, therefore, begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 4 C.F.R. § 102.13(c) (2002).

B. Monthly Handling Charge. Respondent shall pay a late payment handling

charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) day period beyond which an unpaid balance remains.

C. Non-Payment Penalty. On any portion of a civil penalty or stipulated penalty more than ninety (90) days past due, Respondent shall pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment penalty is in addition to charges which accrue or may accrue under Paragraphs 32.A and 32.B.

### **General Provisions**

33. Any authorized representative of U.S. EPA or MDEQ, including agency-authorized independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of any of Respondent's facilities identified in Paragraph 2 of this CAFO, at any reasonable time for the purpose of monitoring Respondent's compliance with the provisions of this CAFO, including inspecting plant equipment, and inspecting and copying all records maintained by Respondent as required by this CAFO. Nothing in this CAFO shall limit the authority of U.S. EPA to conduct tests and inspections under section 3007 of RCRA, 42 U.S.C. § 6928, under section 114 of the CAA, 42 U.S.C. § 7414, or any other statutory or regulatory provision.

34. Whenever under the terms of this CAFO, notice is required to be given to, or a document is required to be sent by, one Party to the other Party, it shall be directed to the individuals at the addresses specified below:

As to U.S. EPA with respect to all RCRA matters:

Allan Batka  
Enforcement & Compliance Assurance Branch (DE-9J)  
Waste, Pesticides and Toxics Division, Region 5  
United States Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604

As to U.S. EPA with respect to all CAA matters:

Compliance Tracker  
Air Enforcement and Compliance Assurance Branch (AE-17J)  
Air and Radiation Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

As to Respondent:

Lawrence C. Paulson, Esq.  
Philip Services Corporation  
755 West Big Beaver, Suite 404  
Troy, Michigan 48084

and

Jim Boggs  
Philip Services Corporation  
755 West Big Beaver, Suite 404  
Troy, Michigan 48084

With a copy to:

Joseph M. Polito, Esq.  
Honigman Miller Schwartz and Cohn LLP  
660 Woodward Ave.  
Suite 2290  
Detroit, Michigan 48226

35. Respondent also shall submit a copy of all documents and correspondence regarding this CAFO to: Chief, MDEQ Waste Management Division, P.O. Box 30241, Lansing, MI 48909.

36. This CAFO is not a permit. Respondent agrees to obtain all appropriate federally enforceable permits for the construction of, as well as the operation of, the pollution control technology and the installation and operation of all necessary associated equipment at the PCPG Facility and the SDG Facility pursuant to the terms of this CAFO. The existence of this CAFO does not absolve Respondent from timely complying with all permitting and licensing requirements imposed by RCRA, the CAA, and Michigan law, and their implementing regulations. Except as provided in the Force Majeure section of this CAFO, the pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of either a CAA permit, a RCRA permit, or a State license, will not affect or postpone Respondent's duties and obligations as set forth in this CAFO. Nothing in this CAFO shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

37. All records generated by Respondent in connection with its obligations under this CAFO shall be retained by Respondent for the effective period of this CAFO and for three years thereafter. Respondent shall maintain legible copies of documentation of the underlying monitoring records and data for any and all documents or reports submitted to U.S. EPA pursuant to this CAFO. Respondent shall mail documentation of any such underlying

monitoring records and data to U.S. EPA within seven (7) days after a request for such information. In all documents or reports submitted to U.S. EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

38. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the authority or ability of U.S. EPA to seek any other remedies or sanctions available to U.S. EPA by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law; provided, however, that U.S. EPA may not seek both stipulated penalties under this CAFO and other monetary penalties available under any other provision of law for a matter that constitutes a violation of this CAFO and a violation of any other applicable law. Except for express provisions of this CAFO, including, but not limited to, provisions contained in Paragraphs 5, 6, and 7 and the following Paragraph, in this CAFO shall not be construed as prohibiting, altering, prejudicing, or in any way limiting the ability of Respondent to defend against any such action by U.S. EPA and Respondent expressly reserves its right to do so.

39. In any subsequent administrative or judicial proceeding initiated by the United States or U.S. EPA for injunctive relief, penalties, or other appropriate relief relating to Respondent for violations of RCRA, the CAA, or their implementing federal or state regulations, other than the violations resolved herein, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or U.S. EPA in the subsequent proceeding should have been brought in the instant case.

40. Notwithstanding any other provision of this CAFO, U.S. EPA expressly reserves any and all rights to bring an enforcement action pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the SDG Facility, the PCPG Facility, or the NRG Facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right: a) for any matters other than violations settled in this CAFO, to take any action authorized under section 3008 of RCRA, 42 U.S.C. § 6928, or under section 113 of the CAA, 42 U.S.C. § 7413; b) to enforce compliance with the applicable provisions of M.A.C. Rules R299.9101 through 299.9816; c) to take any action under 40 C.F.R. Parts 124 and 270; and d) to enforce compliance with this CAFO. Respondent expressly reserves any and all rights to defend against any such enforcement action except as otherwise agreed in this CAFO.

41. This CAFO does not alleviate Respondent's obligation to comply with other provisions of the CAA, 42 U.S.C. §§ 7401-7671q, or of other provisions of RCRA, 42 U.S.C. §§ 6901-6992k, or any other applicable federal, state or local laws or regulations. Respondent shall remain solely responsible for compliance with the terms of this CAFO, with all applicable permits, and with all applicable federal, state and local regulations.

42. Nothing herein shall be interpreted as, or shall be deemed to be, a waiver of sovereign immunity by U.S. EPA as an agency of the United States.

43. If Respondent files a voluntary petition in bankruptcy or is adjudicated a bankrupt under the Bankruptcy Code of the United States or the Companies' Creditors Arrangement Act of Canada, or if Respondent is the subject of a petition in federal, state, or Canadian court for appointment of a trustee or receiver in bankruptcy or insolvency, or if Respondent makes a general assignment for the benefit of creditors, prompt notice thereof shall be given to those persons listed in Paragraph 34 of this CAFO as to Complainants, and to Jacqueline Miller, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604.

44. The Parties expressly intend and agree that, in evaluating whether to execute this CAFO, the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Respondent, within the meaning of 11 U.S.C. § 547(c)(1).

45. In the event that, within ninety-one (91) days after Respondent makes the civil

penalty payment specified in Paragraph 30 of this CAFO, or within ninety-one (91) days after Respondent makes any stipulated penalty payment pursuant to Paragraph 26 of this CAFO, Respondent commences, or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Respondent's debts, or seeking to adjudicate Respondent as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian or other similar official for Respondent, or for all or any substantial part of Respondent's assets, Respondent agrees as follows:

A. Respondent will not argue or otherwise take the position in any such case, proceeding or action that:

(i) Respondent's obligations to make penalty payments to U.S. EPA under this CAFO may be avoided under 11 U.S.C. § 547; or

(ii) the mutual promises, covenants and obligations set forth in this CAFO do not constitute a contemporaneous exchange for new value given to Respondent.

B. Respondent acknowledges that its agreements in this Paragraph 45 are provided in exchange for valuable consideration provided in this CAFO.

46. This CAFO constitutes a full and complete settlement by U.S. EPA of any and all claims for civil penalties and injunctive relief against Respondent for: (i) the violations of the RCRA and the CAA alleged in the Complaint or, with respect to the facilities identified in .

Paragraph 2 of this CAFO, the violations which could have been alleged in the Complaint relating to the statutes and regulations cited therein based upon the facts, transactions, or occurrences alleged therein; (ii) any violations of the RCRA or the CAA alleged by U.S. EPA in the Notices of Violation (“NOV”) to Respondent, dated November 8, 1999, October 12, 2000, and November 15, 2000; (iii) any instances, between November 15, 2000 and the effective date of this CAFO, of violations of Subparts AA, BB, or CC of 40 C.F.R. Part 264 or Part 265 or Subpart DD of 40 C.F.R. Part 63 at the facilities identified in Paragraph 2 of this CAFO; and (iv) any instances, between November 15, 2000 and the effective date of this CAFO, of violations of the RCRA or the CAA related to the waste which U.S. EPA identified in the Complaint as “shredded metal hazardous waste.” This CAFO constitutes a final disposition of the Complaint filed in this case and supercedes the Compliance Order And Proposal For Compliance contained therein.

47. Each Party agrees to bear its own costs and attorneys' fees in the action resolved by this CAFO.

48. It is the intent of the Parties hereto that the clauses of this CAFO are severable, and should any clause(s) be declared by a court or tribunal of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect, except to the extent that a Party is deprived of an essential element of its bargain.

49. Except as provided in the last sentence of this paragraph, this CAFO shall terminate no sooner than two (2) years after the effective date of this CAFO. After that time,

Respondent may submit to U.S. EPA a request to terminate this CAFO. If U.S. EPA determines that Respondent has fully complied with all terms and conditions of this CAFO, including payment in full of all penalties due and owing, but excluding the terms and conditions of Paragraph 24 of this CAFO, U.S. EPA shall provide written notice to Respondent of the termination of this CAFO. Notwithstanding U.S. EPA's written notice to Respondent terminating this CAFO, the provisions of Paragraph 24 regarding Respondent's cost itemization submittal to U.S. EPA shall terminate no sooner than three (3) years after the effective date of this CAFO or upon the date of such submittal, whichever is earlier.

50. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*

51. As used in this CAFO, the term "days," "months," or "years" shall mean calendar days, calendar months, or calendar years; provided, however, that when a due date or deadline required under this CAFO falls on a weekend or federal legal holiday, the due date or deadline shall be extended to the next regular business day.

52. On and after the effective date of this CAFO, Respondent shall not process hazardous waste in the Superblender located at the PCPG Facility and shall close the Superblender in accordance with applicable law.

### **Dispute Resolution**

53. The Parties shall use their best efforts to resolve informally and in good faith all disputes or differences of opinion arising under this CAFO. The Parties agree that the

procedures contained in this section are the sole procedures for resolving disputes arising under this CAFO. If Respondent fails to follow any of the requirements contained in this section in all material respects, then it shall have waived its right to further consideration of the disputed issue.

54. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by U.S. EPA pursuant to this CAFO, Respondent shall notify the U.S. EPA contact persons identified in Paragraph 34 of this CAFO of the dispute. The Parties then shall attempt to resolve the dispute informally.

55. If the Parties cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the U.S. EPA contact persons identified in Paragraph 34 of this CAFO, and a copy must be sent to Jacqueline Miller, Associate Regional Counsel, Office of Regional Counsel, Region 5, U.S. EPA, 77 W. Jackson Blvd. (C-14J), Chicago, Illinois, 60604-3590. This written notice must be mailed to those persons within fourteen (14) days after Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this CAFO and applicable law, the basis for Respondent's position, and any matters which it considers necessary for U.S. EPA's determination.

56. U.S. EPA and Respondent shall have twenty-one (21) days from U.S. EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by agreement of the Parties. During such time

period (the "Negotiation Period"), Respondent may request a conference with the Director of the Waste, Pesticides, and Toxics Division, or the Director of the Air Division, of Region 5, U.S. EPA, or his or her designee, to discuss the dispute and Respondent's objections. U.S. EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

57. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent has the right to submit by first class mail or overnight courier to the Director of the Waste, Pesticides and Toxics Division, or the Director of the Air Division, of U.S. EPA Region 5, within seven (7) days after the end of the Negotiation Period, any additional written arguments and evidence not previously submitted. Based on the record, the Director of the Waste, Pesticides and Toxics Division, or the Director of the Air Division, of U.S. EPA Region 5 shall provide to Respondent its written decision on the dispute (the "U.S. EPA Dispute Decision") which shall include a response to each of Respondent's arguments and evidence. Such decision shall be incorporated into and become an enforceable element of this CAFO.

58. Except as provided in Paragraph 20.C(vi) and Paragraph 29 of this CAFO, the existence of a dispute as defined in this section and U.S. EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CAFO during the pendency of the dispute resolution process.

59. Any agreement to resolve the dispute reached by the Parties pursuant to this section shall be in writing and shall be signed by both Parties. Any such written agreement shall

specify which provisions of the Initial Written Decision are superseded and/or modified. If the written agreement is not signed by Respondent within seven (7) calendar days after the resolution of the dispute, it shall be null and void and the Initial Written Decision shall be incorporated into and become an enforceable element of this CAFO.

60. U.S. EPA reserves its right to argue that the U.S. EPA Dispute Decision is not a final Agency action for purposes of judicial review and Respondent reserves its right to argue otherwise and to seek judicial review of any EPA Dispute Decision.

#### **Force Majeure And Excusable Delay**

61. Force majeure, for purposes of this CAFO, is defined as any event arising from causes not foreseen, or beyond the control of, Respondent or any person or entity controlled by Respondent, including, but not limited, to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CAFO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall mean that Respondent will make good faith efforts, exercising sound judgment and diligence, with consideration given to the circumstances in which Respondent finds itself, to fulfill its obligations under this CAFO.

62. A force majeure event includes, but is not limited to, extraordinary weather events, natural disasters, national emergencies, delays in obtaining access to property not owned or controlled by Respondent, and delays in obtaining any necessary approval, permit, or license from any government agency that result despite Respondent's complete, timely, and appropriate

submission of all information and documentation required for obtaining such approval, permit, or license within a time frame that would permit the work to proceed in a manner contemplated by the schedules and deadlines contained in this CAFO. Force majeure does not include increased costs of work to be performed under this CAFO or financial inability to complete the work.

63. If any event occurs or has occurred that may delay the performance of an obligation under this CAFO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with one or more of the U.S. EPA contact persons identified in Paragraph 34 of this CAFO, or in their absence, their supervisors, within seventy-two (72) hours after when Respondent first knew or should have known that the event might cause a delay. If Respondent wishes to claim a force majeure event, then within five (5) business days thereafter, Respondent shall provide to U.S. EPA in writing:

- A. The anticipated duration of the delay;
- B. All actions taken or to be taken to prevent or minimize the delay;
- C. All other obligations affected by the event, and what measures, if any, taken or to be taken, to minimize the effect of the event on those obligations;
- D. A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;
- E. Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and

F. A statement as to whether, in the opinion of Respondent, such event may cause or contribute to endangerment to public health or the environment.

64. Respondent shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event.

65. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CAFO that is affected by the force majeure event shall be extended by U.S. EPA for such time as U.S. EPA determines is necessary to perform such obligation. U.S. EPA shall notify Respondent in writing as to the length of the extension, if any.

66. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event.

67. If U.S. EPA disagrees with Respondent's assertion of a force majeure event, U.S. EPA shall notify Respondent in writing and Respondent may elect to invoke the dispute resolution provision of this CAFO, and shall follow the time frames for dispute resolution set forth in this CAFO. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or the anticipated delay has been or will be

caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, and that Respondent complied with the requirements of this section. If Respondent satisfies this burden, the time for performance of such obligation shall be extended by U.S. EPA for such time as is necessary to complete such obligation.

#### **Responsibility of Philip**


68. In the event that Respondent fails to perform its obligations under this CAFO, Philip agrees that it shall be responsible for the payment of any penalty that may be imposed against Respondent as a result thereof. The signatory on behalf of Respondent also is Senior Vice President of Philip and, for purposes of this Paragraph 68, certifies by his signature that he is fully authorized to bind Philip to the obligation in this Paragraph 68.

#### **IV. SIGNATORIES**

Each undersigned representative of a Party to this CAFO consisting of 60 pages certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to legally bind such Party to this document.

Agreed to this 2<sup>nd</sup> day of October, 2002.

By:



Brian Recatto

Title: President

For NORTRU, INC., a Michigan corporation, Respondent


Title: Senior Vice President

For PHILIP SERVICES CORPORATION, a Delaware Corporation

Agreed to this 8<sup>th</sup> day of October, 2002.

By: Joseph M. Boyle  
Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
U.S. Environmental Protection Agency, Region 5

Agreed to this 17<sup>th</sup> day of October, 2002.

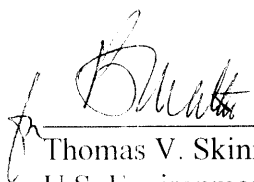
By: 

Stephen Rothblatt, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

ROTHBLATT (ARD)  
SIGNATURE

The above being agreed and consented to, it is so ordered

this 17<sup>th</sup> day of October, 2002.

By:   
Thomas V. Skinner, Regional Administrator  
U.S. Environmental Protection Agency, Region 5

IN THE MATTER OF:

NORTRU, INC.

U.S. EPA Facility I.D. MID 980 615 298

U.S. EPA Facility I.D. MID 985 684 088

U.S. EPA Facility I.D. MID 985 619 824

Detroit, Michigan

U.S. EPA DOCKET NO. MM-05-2002-0010

RCRA-05-2002-0017

CAA-05-2002-0020

## ATTACHMENT 1

### **Container Processing System Building Operations Plan**

#### **Purpose**

This Plan establishes the methods that Petro-Chem Processing Group of Nortru, Inc. (“PCPG”) will use to operate units regulated under Subpart DD of 40 C.F.R. Part 63 (2002) (“Regulated Units”) that are located within the Container Processing System (“CPS”) building in the event that the CPS building is re-constructed and re-configured so that it effectively functions as two permanent total enclosures (“PTE”) which have their organic air emissions that are regulated under Subpart DD of 40 C.F.R. Part 63 (2002) (“Organic Air Emissions”) alternately controlled by a single 20,000 cubic feet per minute (“cfm”) regenerative thermal oxidizer (“RTO”), as provided for in the Consent Agreement and Final Order (“CAFO”) to which this Plan is Attachment 1.

This Plan provides for the control of Organic Air Emissions in the CPS building in accordance with the requirements of Subpart DD of 40 C.F.R. Part 63 (2002). Organic Air Emissions from the tanks located within the CPS building, i.e., the maceration tank, mini-maceration tank, liquefaction tank, and solvent tank, will be controlled in accordance with the standards set forth in 40 C.F.R. § 63.685 (2002). Organic Air Emissions from the transfer systems located within the CPS building, which are described below, will be controlled in accordance with the standards set forth in 40 C.F.R. § 63.689 (2002). It should be noted that PCPG’s current federal hazardous waste treatment and storage permit (the “HSWA Permit”) indicates that the transfer systems located in the CPS building should be regulated under Subpart X of 40 C.F.R. Part 264, and states that PCPG “shall control air emissions from the Subpart X units . . . in accordance with the *applicable* requirements of 40 C.F.R. Part 264, Subpart CC”; however, because this Plan provides for compliance with Subpart DD of 40 C.F.R. Part 63, Subpart CC of 40 C.F.R. Part 264 will become inapplicable to the Regulated Units located within the CPS building when Nortru, Inc., makes the certification described at 40 C.F.R. § 264.1080(b)(7).<sup>1</sup>

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<sup>1</sup> This regulation states: “The requirements of [40 C.F.R. Part 264, Subpart CC,] do not apply to . . . a hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.”

Therefore, compliance with this Plan is consistent with the HSWA Permit, and the HSWA Permit does not impose any additional compliance obligations on PCPG with respect to Organic Air Emissions from Regulated Units located within the CPS building.

### **Regulated Units Located Within the CPS Building**

The CPS building contains the Phase 1 Unit and the Phase 2 Unit. The Phase 1 Unit consists of a maceration tank (Tank 32) and a transfer system used to transfer liquid and solid waste from containers to the maceration tank. Similarly, the Phase 2 Unit consists of the mini-maceration tank (Tank 44) and a transfer system used to transfer waste from containers to that tank. In addition to the transfer systems and the two maceration tanks, the CPS building also contains the liquefaction tank (Tank 33) and the solvent tank (Tank 34), which are connected to both the maceration tank and the mini-maceration tank via pumps and piping.

The following equipment is associated with the Phase 1 Unit transfer system:

- The compaction chamber, which consists of a hydraulic press housed in a metal enclosure with three openings. Two of these openings are used for container ingress and egress and are isolated from the atmosphere by dual air lock doors. The third opening is open to the shredder located below the compaction chamber.
- The shredder, which is housed in a metal enclosure with an opening on the top to receive waste from the compaction chamber, and an opening on the bottom leading to the “tail section” located below the shredder.
- The tail section, which consists of a metal enclosure that collects liquid, semi-solid and solid waste transferred from the shredder, and channels that material to the drag conveyor. The lower portion of the tail section, where liquids collect, is also connected directly to the maceration tank via a pump and pipes.
- The drag conveyor, which is housed in a metal enclosure that is open to the tail section at one end of the enclosure, and is open to the fill pipe on the maceration tank at the other end. Currently, there is no closure device on the fill pipe to the maceration tank that would isolate the tank from the transfer system; however, in the event that this Plan is implemented, a slide gate will be installed on the fill pipe in accordance with the Equipment Modifications section of this Plan.
- The drum carcass conveyor, which transfers empty containers from the exit air lock on the compaction chamber to a hopper. Currently, the drum carcass conveyor is not enclosed; however, in the event that this Plan is implemented, the conveyor will be enclosed in accordance with the Equipment Modifications

section of this Plan. It should be noted that this conveyor transfers empty containers that are not regulated under Subpart DD of 40 C.F.R. Part 63; however, PCPG intends to control air emissions from this transfer system in the same manner and to the same extent as if it was so regulated.

The following equipment is associated with the Phase 2 Unit transfer system:

- The air lock chamber, which consists of a metal enclosure with two openings. One opening is used for container ingress and is isolated from the atmosphere by dual air lock doors. The other opening leads to the stacked shredders located below the air lock chamber.
- The stacked shredders, which are housed in a metal enclosure with an opening on the top to receive waste from the air lock chamber above, and an opening on the bottom leading to the transfer conveyor.
- The transfer conveyor, which is housed in a metal enclosure. The receiving end of the conveyor enclosure is open to the stacked shredders. The discharge end of the conveyor enclosure is open to the lower shredder enclosure located below, and is open to the magnetic separator enclosure located above.
- The magnetic separator, which is housed in a metal enclosure that is open to the transfer conveyor enclosure and to a discharge chute leading to a container. Currently, there is no closure device at the discharge end of the chute leading from the magnetic separator; however, in the event that this Plan is implemented, a slide gate will be installed on this chute in accordance with the Equipment Modifications section of this Plan.
- The lower shredder, which is housed in a metal enclosure with an opening on the top to receive waste from the transfer conveyor above, and an opening on the bottom leading to the discharge conveyor enclosure.
- The discharge conveyor, which is housed in a metal enclosure that is open to the shredder enclosure located above. The discharge conveyor enclosure is also open at both ends of the conveyor, which can be operated in either direction. At one end, the conveyor discharges waste to a chute leading to a self-dumping hopper. A slide gate is installed at the opening to this chute where it discharges to the hopper. At the other end of the conveyor, the enclosure is open to the fill pipe on the mini-maceration tank. A slide gate is installed on the mini-maceration tank opening at this location that is designed to operate with no detectable organic emissions from the mini-maceration tank, as defined at 40 C.F.R. § 63.681.

In addition to the openings on the transfer system equipment described above, that

equipment also has various access hatches that can be opened for maintenance, inspection, and other purposes. All of the components on each transfer system are connected such that there are no visible cracks, holes, gaps or other spaces between the components in accordance with 40 C.F.R. § 63.689 (2002).

### **Required Operating Conditions**

In the event that this Plan is implemented, the following operating conditions shall be followed:

1. Only one of the two, separate, PTEs located within the CPS building shall have its Organic Air Emissions routed to the RTO at any given time; and
2. Hazardous waste shall not be processed within a PTE that is not being routed to the RTO unless the Regulated Unit that is located within that PTE is vented directly to an effectively operating control device (such as the RTO or the Master Vapor Recovery System ("MVRS")) or is otherwise in compliance with Subpart DD of 40 C.F.R. Part 63. Appendix A to this Plan is a list of those Regulated Units located within the CPS Building which will have their emissions vented directly to either the RTO or another effectively operating control device as of the first day of the RTO demonstration period as defined in Paragraph 20.C.vi of the CAFO. During the effective life of the CAFO, if there is a change in the identity of the Regulated Units which should be listed in Appendix A (i.e., listed Regulated Units are no longer vented directly to a control device, or new Regulated Units that are directly vented to a control device begin operation), Respondent shall submit an amended Appendix A to U.S. EPA within sixty (60) calendar days after such a change occurs.

### **Equipment Modifications**

To control Organic Air Emissions within the CPS building as required by Subpart DD of 40 C.F.R. Part 63 (2002), PCPG will make the following modifications to the Regulated Units and associated equipment located within the CPS building:

Phase I Unit –

- Install an automatically-controlled slide gate on the discharge of the drum pancake conveyor that will cover the opening in the conveyor enclosure such that there are no visible cracks, holes, gaps or other spaces between the

interface of the slide gate edge and its mounting in accordance with 40 C.F.R. § 63.689 (2002).

- Enclose the discharge end of the drum pancake conveyor and slop chute.
- Install an automatically-controlled slide gate where the discharge conveyor discharges to the maceration tank fill pipe that will be designed to operate with no detectable organic emissions from the maceration tank, as defined at 40 C.F.R. § 63.681, in accordance with 40 C.F.R. § 63.685 (2002).
- Install a remotely-operating valve on the drain pipe from the drum pancake conveyor drain pan to the CPS tail section that will cover the opening in the pipe such that there are no visible cracks, holes, gaps or other spaces between the interface of the valve and its mounting in accordance with 40 C.F.R. § 63.689 (2002).

Phase 2 Unit –

- Install an automatically-controlled slide gate on the scrap metal chute that will cover the opening in the chute such that there are no visible cracks, holes, gaps or other spaces between the interface of the slide gate edge and its mounting in accordance with 40 C.F.R. § 63.689 (2002).

### **Control Programming Changes**

PCPG will modify the programming of the PLC Controllers on the Phase 1 Unit and the Phase 2 Unit, or program a controller installed as part of the RTO project, to: (i) prevent the simultaneous operation of both Units; (ii) prevent the operation of either Unit if it is located within a PTE which, at that time, is not being actively vented to the RTO; and (iii) allow the operation of either Unit only during times when the PTE containing that Unit is actively being vented to the RTO.

Such controllers shall also be programmed to, upon cessation of hazardous waste processing in the Phase 1 Unit or the Phase 2 Unit: (i) automatically shut the slide gates installed on the formerly operating Unit, including the airlock doors, the inclined conveyor feed and discharge chutes and the drum pancake airlock and conveyor gates on the Phase 1 Unit, and the airlock doors, scrap metal chute gate, and the discharge conveyor chutes at the tank and the two hopper feeds on the Phase 2 Unit; (ii) continuously vent to the RTO the PTE in which the formerly operating Unit is located for thirty (30) minutes after such cessation and after the completion of all procedures mentioned in subparagraph (i) of this paragraph, which will result in 2.6 air changes in the Phase 1 Unit PTE and 3.7 air changes in the Phase 2 Unit PTE; and (iii) prevent the

operation of the other Unit, and prevent the venting to the RTO of the PTE in which that other Unit is located during that thirty (30) minute period. The automatic program described in this paragraph shall be initiated by a manual switch that will be activated after completion of the procedures described in the Manual Operating Procedures section of this Plan.

### **Manual Operating Procedures**

PCPG will perform the following steps prior to the beginning of the thirty (30) minute period of continuously venting a PTE to the RTO referenced in subparagraph (ii) of the Control Programming Changes section of this Plan:

For CPS Phase 1 Unit PTE –

- PCPG will stop adding hazardous waste to the Phase 1 Unit;
- The drag conveyor and drum pancake conveyor will be operated to discharge, to the extent practicable, flowable waste and pancakes from the Phase 1 Unit;
- The Phase 1 Unit Controller will be set to shutdown, which will initiate the automatic operations discussed above, including the continued operation of the PTE for thirty (30) minutes;
- Each open hatch on the Phase 1 Unit transfer system shall be cleaned of visible residual wastes so that each hatch may be closed in a manner which ensures that there are no visible cracks, holes, gaps or other spaces between the interface of the hatch edge and its mounting in accordance with 40 C.F.R. § 63.689;
- Any open hatches on the Phase 1 Unit that are not controlled automatically will be manually closed in order to minimize emissions from the Unit;
- The drum pancake hopper will be emptied into the pancake roll off container (it should be noted that the drum pancakes are empty containers that are not regulated under Subpart DD of 40 C.F.R. Part 63; however, PCPG intends to manage containers holding the drum pancakes in the same manner and to the same extent as if they were so regulated);
- The drum under the discharge of the drum pancake conveyor will be removed and managed in compliance with 40 C.F.R. § 63.688;
- The drum pancake roll off container will be managed consistent with 40 C.F.R. § 63.688 (as noted previously, the drum pancakes are empty containers that are not regulated under Subpart DD of 40 C.F.R. Part 63; however, PCPG intends to manage containers holding the drum pancakes in the same manner and to the same extent as if they were so regulated);

- All other containers of hazardous waste located in this PTE that are Regulated Units will be managed in compliance with 40 C.F.R. § 63.688; and
- All filling of the Maceration Tank will be discontinued.

For CPS Phase 2 Unit PTE –

- PCPG will stop adding hazardous waste to the Phase 2 Unit;
- The Phase 2 Unit will be operated to discharge, to the extent practicable, flowable waste and scrap metal from the Unit;
- The Phase 2 Unit Controller will be set to shutdown, which will initiate the automatic operations discussed above, including the continued operation of the PTE for thirty (30) minutes;
- Each open hatch on the Phase 2 Unit transfer system shall be cleaned of visible residual wastes so that each hatch may be closed in a manner which ensures that there are no visible cracks, holes, gaps or other spaces between the interface of the hatch edge and its mounting in accordance with 40 C.F.R. § 63.689;
- Any open hatches on the Phase 2 Unit that are not controlled automatically will be manually closed in order to minimize emissions from the Unit;
- All containers that are Regulated Units in the PTE containing scrap metal or hazardous waste will be managed in compliance with 40 C.F.R. § 63.688;
- The hoppers located under the discharge chute (if any) will be removed and either managed in compliance with 40 C.F.R. § 63.688 or emptied into a roll off container so as to meet the conditions for what is an “empty container” set forth at 40 C.F.R. § 63.921, in which case such empty containers will not be regulated under Subpart DD of 40 C.F.R. Part 63;
- The roll off container, if so utilized, will be managed in compliance with 40 C.F.R. § 63.688; and
- All filling of the Phase 2 Unit mini-maceration tank will be discontinued.

#### **Allowable Activities Within A PTE That Is Not Being Actively Vented To The RTO**

Except as provided in this section, PCPG shall not operate any Regulated Unit located within a PTE that is not being actively vented to the RTO:

- PCPG may continue to operate a Regulated Unit that is not required to be routed to a control device pursuant to Subpart DD of 40 C.F.R. Part 63, for example a container that is subject to Container Level 1 or Container Level 2 controls, provided that PCPG complies with all applicable air emission control

- regulations for that Regulated Unit (such as 40 C.F.R. § 63.688); and
- PCPG may continue to operate a Regulated Unit that is routed directly to an effectively operating control device, such as the RTO or the MVRS. For example, PCPG anticipates that the liquefaction tank and the solvent tank will remain directly vented to a control device in order to allow operation of these Regulated Units even during time periods when the PTE in which they are located is not being actively vented to the RTO.

Consistent with applicable regulations, PCPG may conduct repair and maintenance activities, which may include opening of the hatches or covers, on Regulated Units that are located in a PTE that is not being actively vented to the RTO at the time the repair or maintenance is occurring. Such repair and maintenance activities may also include the operation of such Regulated Units for testing and shakedown purposes; however, no hazardous waste shall be processed during such operation unless the Regulated Unit is located in a PTE that is being actively vented to the RTO. When repair or maintenance work is not actively being performed (such as after the shift ends or when workers are assigned other tasks), all Regulated Units shall be closed or covered as specified in the Manual Operating Procedures section of this Plan and in compliance with all applicable regulations.

#### **Monitoring of the Slide Gates on the Maceration Tanks**

The slide gates installed on the maceration tank and the mini-maceration tank will be physically located inside the conveyor enclosures. Thus, although the slide gates will be designed to operate with no detectable organic emissions, as defined at 40 C.F.R. § 63.681 (2002), their configuration will prevent any direct sampling at the interfaces between the slide gates and the tank fill pipes. Therefore, any monitoring of these closure devices for purposes of demonstrating no detectable organic emissions will be performed at the seal around the shaft that operates the slide gate. The seal will be located where the shafts pass through the metal enclosures that surround the conveyors. PCPG will monitor these closure devices at such locations at the frequency specified in applicable regulations.

## **Appendix A**

The following Regulated Units located within the CPS building will be vented directly to an effectively operating control device (such as the RTO or the MVRS):

Maceration tank  
Mini-maceration tank  
Liquefaction tank  
Solvent tank



**In the Matter of:** Nortru, Inc.  
**Docket Numbers:** MM-05-2002-0010, RCRA-05-2002-0017, CAA-05-2002-0020

### CERTIFICATE OF SERVICE

I hereby certify that today I filed the original and one copy of this **Consent Agreement and Final Order** and this **Certificate of Service** in the Office of Regional Hearing Clerk (Mail Code E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507.

I further certify that I caused true and correct copies of the filed document to be mailed to the following:

Lawrence C. Paulson, Esquire  
Philip Services Corporation  
755 West Big Beaver Road, Suite 410  
Troy, Michigan

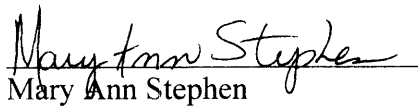
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Mary Ann Stephen  
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Chicago, IL 60604-3507.

Dated: October 21, 2002

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